

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*DECISION*

**Applicant:** Paul Hathaway (Chez Albert)

**Date application filed with the Town Clerk:** July 29, 2008

**Nature of request:** Request to modify Condition #1 of ZBA FY2005-00008, to allow restaurant to be open on seven days per week, including Mondays (11A.M.-1A.M.)

**Address:** 27 South Pleasant Street (Map 14A, Parcel 253, General Business Zoning District)

**Legal notice:** Published on August 13 and August 20, 2008 in the Daily Hampshire Gazette and sent to abutters on August 13, 2008.

**Board members:** Thomas Simpson, Jane Ashby and Albert Woodhull

**Submissions:** The petitioner submitted the following with the application:

- A completed application form and management plan;
- A copy of the Special Permit, ZBA FY2005-00008, for the restaurant.

**Site Visit:** Due to the nature of the request, a site visit was not scheduled for this project.

**Public Hearing:** August 28, 2008

Mr. Simpson disclosed that his private business has had dealings with Chez Albert's. However, he will receive no financial gain from this case and stated that this prior relationship will not affect his ability to provide fair and impartial judgment on the application.

The petitioner, Paul Hathaway, owner of Chez Albert's restaurant explained that, based on customer demand, he would like to extend his business hours to be open on Mondays as well as Tuesday through Sunday. Mr. Hathaway noted that Condition #1 of the previous Special Permit identified the hours of operation as being from 11:00 A.M. to 1:00 A.M, Tuesday through Sunday.

The Board asked if any other aspect of the business or management plan were changing. The petitioner stated that no other aspect was changing.

Mr. Simpson moved to close the public hearing, Ms. Ashby seconded the motion, and the vote was unanimous to close the public hearing.

**Public Meeting:**

The Board agreed to amend Condition #1 to allow for the restaurant to be open on Mondays from 11:00A.M to 1:00 A.M.

**Findings:**

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings, required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood in which it is proposed because it is an existing, permitted restaurant use in the General Business Zoning District. There are numerous restaurants in the vicinity.

10.382, 10.383 and 10.385 – The proposal will not constitute a nuisance due to air pollution, lights or visually offensive structures and accessories. There were no complaints concerning odors in the previous restaurant operation, and the venting system will be the same. Lighting will remain as is, and both the Design Review Board and the ZBA approved of the colors and logo for the restaurant exterior.

10.384 - Adequate and appropriate facilities will be provided for the proper operation of the proposed restaurant, since the facilities have already been successfully operated under the previous approval. The facilities are adequate and appropriate to support the operation of the restaurant on Mondays.

10.387 – The proposal provides convenient and safe movement within the site and in relation to adjacent property since seating is limited both indoors and outdoors. The addition of operating hours on Mondays will not negatively affect the convenient and safe movement within the site.

10.388 and 10.389 – Deliveries are made at the rear of the building ensures adequate off-street loading and unloading. Refuse and recyclables are stored at the back of the building within a chain link fence, and will be removed by a commercial waste hauler in conformance with the Town requirements.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it enhances the business district and provides a service to the residents.

**Public Meeting - Zoning Board Decision:**

Ms. Ashby moved to APPROVE a Special Permit to Paul Hathaway to modify Condition #1 of Special Permit ZBA FY2005-00008 to allow the restaurant to be open on Mondays (11A.M.-1A.M.), with no other changes to the operation of the business. Mr. Woodhull seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to APPROVE a Special Permit to Paul Hathaway to modify condition #1 of Special Permit ZBA FY2005-00008 to allow the restaurant to be open on Mondays (11A.M.-1A.M.), with no other changes to the operation of the business on the premises at 27 South Pleasant Street (Map 14A, Parcel 253, B-G Zoning District) subject to the following conditions:

\_\_\_\_\_  
THOMAS SIMPSON

\_\_\_\_\_  
JANE ASHBY

\_\_\_\_\_  
ALBERT WOODHULL

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2008 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.

TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2008.  
NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2008  
to the attached list of addresses by \_\_\_\_\_, for the Board.

NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2008,  
in the Hampshire County Registry of Deeds.

**Town of Amherst**  
**Zoning Board of Appeals**

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants a Special Permit to Paul Hathaway to modify Condition #1 of Special Permit ZBA FY2005-00008 to allow the restaurant to be open seven days per week, including Monday (11A.M.-1A.M.), with no other changes to the operation of the business, on the premises at 27 South Pleasant Street (Map 14A, Parcel 253, B-G Zoning District), subject to the following conditions:

1. The hours of operation shall be from 11:00 AM to 1:00 AM, Monday through Sunday.
2. There shall be no more than five (5) employees on site at any time.
3. Any changes to the façade or exterior shall be reviewed by the Design Review Board and submitted to the Zoning Board of Appeals for approval at a public meeting.
4. There shall be no deep fat frying on the premises.
5. Deliveries shall be made at the rear of the building.
6. Seasonal outdoor dining shall be for a maximum of four (4) patrons. Outdoor furniture shall be removed between the dates of November 1 and April 1.
7. No disposable plates and utensils shall be used for the outdoor dining.
8. The petitioner shall maintain the sidewalk clear of litter in front of the restaurant.
9. Entertainment shall be limited to non-amplified music and vocals.
10. Any changes to the management or floor plans must be submitted to the Board for approval at a public meeting.
11. Refuse and recyclables shall be stored inside the chain link fence behind the restaurant. The petitioner shall contract with a certified hauler for regular removal of all waste, including cooking oil/grease.
12. There shall be no delivery or take out service.
13. The permit shall expire upon change of ownership or management of the restaurant.

\_\_\_\_\_  
THOMAS SIMPSON, Chair  
Amherst Zoning Board of Appeals

\_\_\_\_\_  
DATE